

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:)

JOHN OGAI, M.D.)

**Physician's and Surgeon's)
Certificate No. G 75024)**

Respondent)
_____)

Case No. 09-2013-230888


DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on September 21, 2016.

IT IS SO ORDERED: August 22, 2016.

MEDICAL BOARD OF CALIFORNIA

By: 
**Howard Krauss, M.D., Chair
Panel B**

1 KAMALA D. HARRIS
Attorney General of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 MARTIN W. HAGAN
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4 State Bar No. 155553
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8 *Attorneys for Complainant*

10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

14 **JOHN OGAI, M.D.**
15 **10 Vercelli**
Irvine, California 92620

16 **Physician's and Surgeon's Certificate**
17 **No. G75024,**

18 Respondent.

Case No. 09-2013-230888
OAH No. 2015080041

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical
23 Board of California. She brought this action solely in her official capacity and as such is
24 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
25 Martin W. Hagan, Deputy Attorney General.

26 2. Respondent John Ogai, M.D. ("respondent") is represented in this proceeding by
27 Henry Lewin, Esq., of Lewin & Levin whose address is: 11377 West Olympic Boulevard, Fifth
28 Floor, Los Angeles, CA 90064-1683.

3. On August 25, 1992, the Medical Board of California issued Physician's and Surgeon's Certificate No. G75024 to respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges and allegations brought in Accusation No. 09-2013-230888 and will expire on January 31, 2018, unless renewed.

JURISDICTION

4. On April 28, 2015, Accusation No. 09-2013-230888 was filed before the Medical Board of California (Board), Department of Consumer Affairs, and is currently pending against respondent. A true and correct copy of Accusation No. 09-2013-230888 and all other statutorily required documents were properly served on respondent. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 09-2013-230888 is attached hereto as Exhibit A and incorporated by reference as if fully set forth herein.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in Accusation No. 09-2013-230888. Respondent has also carefully read, fully discussed with counsel, and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in Accusation No. 09-2013-230888; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Having the benefit of counsel, respondent hereby voluntarily, knowingly, freely, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent agrees that, at an administrative hearing, complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 09-2013-

230888, and that he has thereby subjected his Physician's and Surgeon's Certificate No. G75024 to disciplinary action. Respondent further agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

9. Respondent agrees that if an accusation and/or petition to revoke probation is filed against him before the Medical Board of California, or if he ever petitions for early termination or modification of probation, in any proceeding before the Medical Board of California, all of the charges and allegations contained in Accusation No. 09-2013-230888 shall be deemed true, correct and fully admitted by respondent for purposes of any such proceeding or any other licensing proceeding involving respondent in the State of California.

CONTINGENCY

10. The parties agree that this Stipulated Settlement and Disciplinary Order shall be submitted to the Board for its consideration in the above-entitled matter and, further, that the Board shall have a reasonable period of time in which to consider and act on this Stipulated Settlement and Disciplinary Order after receiving it. By signing this stipulation, respondent fully understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation prior to the time the Board considers and acts upon it.

11. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and Disciplinary Order, the Board may receive oral and written communications from its staff and/or the Attorney General's office. Communications pursuant to this paragraph shall not disqualify the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving respondent. In the event that the Board, in its discretion, does not approve and adopt this Stipulated Settlement and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto.

Respondent further agrees that should the Board reject this Stipulated Settlement and Disciplinary

1 Order for any reason, respondent will assert no claim that the Board, or any member thereof, was
2 prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Settlement and
3 Disciplinary Order or of any matter or matters related hereto.

4 **ADDITIONAL PROVISIONS**

5 12. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to
6 be an integrated writing representing the complete, final and exclusive embodiment of the
7 agreements of the parties in the above-entitled matter.

8 13. The parties agree that copies of this Stipulated Settlement and Disciplinary Order,
9 including copies of the signatures of the parties, may be used in lieu of original documents and
10 signatures and, further, that such copies and signatures shall have the same force and effect as
11 originals.

12 14. In consideration of the foregoing admissions and stipulations, the parties agree the
13 Board may, without further notice to or opportunity to be heard by respondent, issue and enter the
14 following Disciplinary Order:

15 **DISCIPLINARY ORDER**

16 **A. PUBLIC REPRIMAND**

17 IT IS HEREBY ORDERED that respondent John Ogai, M.D., Physician's and
18 Surgeon's Certificate No. G75024, shall be and is hereby Publicly Reprimanded pursuant to
19 California Business and Professions Code section 2227, subdivision (a)(4). This Public
20 Reprimand, which is issued in connection with respondent's prior employment at Greenfield
21 Alternative Medical Evaluations, as set forth in Accusation No. 09-2013-230888, is as follows:

22 You aided and abetted the unlicensed practice of medicine and engaged in
23 general unprofessional conduct from on or about January 2013, to on or about June
24 2013, when you associated yourself with Greenfield Alternative Medical
25 Evaluations which was owned and operated by unlicensed individuals, as more
26 fully set forth in Accusation No. 09-2013-230888, a true and correct copy of which
27 is attached hereto as Exhibit A and incorporated by reference as if fully set forth
28 herein.

R. EDUCATION PROGRAM

Within 60 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours. The educational program or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition. Failure to participate in and successfully complete the education program requirements as outlined above shall constitute unprofessional conduct and be grounds for further disciplinary action.

ACCEPTANCE

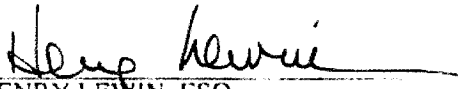
I have carefully read the above Stipulated Settlement and Disciplinary Order and, having the benefit of counsel, enter into it freely, voluntarily, intelligently, and with full knowledge of its force and effect on my Physician's and Surgeon's Certificate No. G75024. I fully understand that, after signing this stipulation, I may not withdraw from it, that it shall be submitted to the Medical Board of California for its consideration, and that the Board shall have a reasonable period of time to consider and act on this stipulation after receiving it. By entering into this stipulation, I fully understand that, upon formal acceptance by the Board, I shall be publicly reprimanded by the Board and shall be required to comply with all of the terms and conditions of the Disciplinary Order set forth above. I also fully understand that any failure to comply with the terms and conditions of the Disciplinary Order set forth above shall constitute unprofessional conduct and will subject my Physician's and Surgeon's Certificate No. G75024 to further disciplinary action.

DATED: W 6/1/16

JOHN LOGAL, M.D.
Respondent

1 I have read and fully discussed with respondent John Ogai, M.D., the terms and conditions
2 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve
3 its form and content.

4 DATED: JUNE 1, 2016


HENRY LEWIN, ESQ.
Attorney for respondent

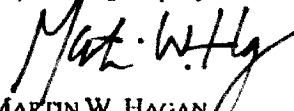
7 **ENDORSEMENT**

8 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
9 submitted for consideration by the Medical Board of California.

10 Dated: 6/2/2016

Respectfully submitted,

11 KAMALA D. HARRIS
12 Attorney General of California
13 THOMAS S. LAZAR
Supervising Deputy Attorney General


15 MARTIN W. HAGAN
16 Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 09-2013-23088

1 KAMALA D. HARRIS
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2 THOMAS S. LAZAR
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8 *Attorneys for Complainant*

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11

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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

13

In the Matter of the Accusation Against:

Case No. 09-2013-230888

14

JOHN OGAI, M.D.
10 Vercelli
Irvine, California 92620

ACCUSATION

15

16

Physician's and Surgeon's Certificate
No. G75024,

17

Respondent.

18

19

Complainant alleges:

20

PARTIES

21

1. Kimberly Kirchmeyer (complainant) brings this Accusation solely in her official capacity
22 as the Executive Director of the Medical Board of California, Department of Consumer Affairs
23 (Board).

24

2. On or about August 25, 1992, the Medical Board issued Physician's and Surgeon's
25 Certificate Number G75024 to John Ogai, M.D. (respondent). The Physician's and Surgeon's
26 Certificate was in full force and effect at all times relevant to the charges brought herein and will
27 expire on January 31, 2016, unless renewed.

28

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO April 28 2015
BY R. Voong ANALYST

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws.
All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, be publicly reprimanded which may include a requirement that the licensee complete relevant educational courses, or have such other action taken in relation to discipline as the Board deems proper.

5. Section 2052 of the Code states:

“(a) Notwithstanding Section 146, any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in this chapter [Chapter 5, the Medical Practice Act], or without being authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law, is guilty of a public offense, punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the state prison, by imprisonment in a county jail not exceeding one year, or by both the fine and either imprisonment.

“(b) Any person who conspires with or aids or abets another to commit any act described in subdivision (a) is guilty of a public offense, subject to the punishment described in that subdivision.

“(c) The remedy provided in this section shall not preclude any other remedy provided by law.”

6. Section 2264 of the Code states:

“The employing, directly or indirectly, the aiding, or the abetting of any unlicensed person or any suspended, revoked, or unlicensed practitioner to engage in

1 the practice of medicine or any other mode of treating the sick or afflicted which
2 requires a license to practice constitutes unprofessional conduct.”

3 7. Section 2234 of the Code, states:

4 “The board shall take action against any licensee who is charged with
5 unprofessional conduct.¹ In addition to other provisions of this article, unprofessional
6 conduct includes, but is not limited to, the following:

7 “(a) Violating or attempting to violate, directly or indirectly, assisting in or
8 abetting the violation of, or conspiring to violate any provision of this chapter.

9 “...

10 “(f) Any action or conduct which would have warranted the denial of a
11 certificate.

12 “...”

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Aiding and Abetting Unlicensed Practice of Medicine)**

15 8. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined by
16 section 2052, subdivision (b), of the Code, in that he aided and abetted the unlicensed practice of
17 medicine, as more particularly alleged hereinafter:

18 9. Greenfield Alternative Medical Evaluations (“GAME”) was established at some time
19 between November 2012 to February 2013, by C.R., who is not a licensed medical professional.
20 GAME advertised itself as a low cost medical marijuana evaluation center which offers medical
21 marijuana evaluations and medical marijuana recommendations. First time patient visits for medical
22 marijuana evaluations were offered for sixty dollars and renewal visits for medical marijuana
23 recommendations were offered for forty-five dollars with a “100% Satisfaction Guarantee.” The
24 various business documents for GAME identify different unlicensed individuals who were involved

25
26 ¹ Unprofessional conduct under California Business and Professions Code section 2234 is
27 conduct which breaches the rules of ethical code of the medical profession, or conduct which is
28 unbecoming a member in good standing of the medical profession, and which demonstrates an
unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564,
575.)

1 with the establishment and operation of GAME at its inception.²

2 10. On or about January 2013, respondent was hired to work at GAME. In doing so, he
3 executed a Memorandum of Understanding to Terms of Independent Contractor Agreement
4 (hereinafter "MOU") which set forth a start date of January 19, 2013, and the various terms and
5 conditions of his employment. When he started his employment at GAME, respondent believed the
6 owners of GAME were those individuals who were listed on the MOU, i.e., D.V., G.M., and C.R., all
7 unlicensed individuals, who were collectively referred to in the MOU as "The Owners of [GAME]."
8 According to the MOU, the owners of GAME set forth the terms and conditions of respondent's
9 employment as an alleged "independent contractor."³ While employed at GAME, respondent
10 conducted medical evaluations on patients to determine if they were candidates for medical marijuana
11 recommendations. Respondent had no ownership interest in GAME. While working at GAME,
12 respondent aided and abetted the unlicensed practice of medicine. Respondent worked at GAME until
13 approximately June 2013, when he left after the unlicensed owners of GAME were falling behind in
14 paying him.

15 ////

16 ////

17 ////

18 ////

19 ////

20
21 ² The City of Riverside Business Tax Application for GAME dated November 4, 2012, lists
22 S.H. as the "owner" of GAME. S.H. also operated the mobile Lakeview Collective, run out of a
23 motorhome, which provided marijuana to patients with medical marijuana recommendations. During
24 the course of the Board's investigation, C.R. was interviewed and identified herself as the person
25 who started GAME, paid for an attorney to prepare the documentation to start up GAME, and who
26 managed GAME. A Memorandum of Understanding to Terms of Independent Contractor Agreement
27 executed by respondent on January 19, 2013, lists D.V. as "The Operator/Manager" of GAME, G.M.
28 as "The Investor" and C.R. as "The Co-Social Media Director" and "Financial Supervisor." They are
collectively referred to as "The Owners of Greenfield Alternative Medical Evaluations" in the
aforementioned Memorandum of Understanding to Terms of Independent Contractor Agreement.

26 ³ In a letter to the Board dated May 9, 2013, respondent advised the Board, in pertinent part,
27 that "I work as an independent contractor and GAME just happens to be one of the corporations that I
28 contract my services to. I can assure you that GAME is NOT my corporation and I have no financial
interest in that corporation."

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Employment of Unlicensed Person)**

3 11. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined by
4 section 2264, of the Code, in that he aided and abetted an unlicensed person to engage in the practice
5 of medicine, as more particularly alleged in paragraphs 8 through 10, above, which are incorporated
6 by reference and realleged as if fully set forth herein.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(General Unprofessional Conduct)**

9 12. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined by
10 section 2234, of the Code, in that he aided and abetted an unlicensed person to engage in the practice
11 of medicine, as more particularly alleged in paragraphs 8 through 11, above, which are incorporated
12 by reference and realleged as if fully set forth herein.

13 **PRAYER**

14 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and
15 that following the hearing, the Medical Board of California issue a decision:

16 1. Revoking or suspending Physician's and Surgeon's Certificate Number G75024, issued to
17 respondent John Ogai, M.D.;

18 2. Revoking, suspending or denying approval of respondent John Ogai, M.D.'s authority to
19 supervise physician assistants, pursuant to section 3527 of the Code;

20 3. Ordering respondent John Ogai, M.D., if placed on probation, to pay the Board the costs
21 of probation monitoring; and

22 4. Taking such other and further action as deemed necessary and proper.

23 DATED: April 28, 2015

Elizabeth Arnal

24 *for* KIMBERLY KIRCHMEYER
25 Executive Director
26 Medical Board of California
27 Department of Consumer Affairs
28 State of California
Complainant

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